

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
SEP 02 2005


CLERK

*
EVELYN A. BLACKMOON; ROBERT * CIV 05-4017
W. COURNOYER; SHARON DRAPEAU; *
and ALAN FLYING HAWK, *
*
Plaintiffs, *
vs. * MEMORANDUM OPINION
* AND ORDER
*
CHARLES MIX COUNTY; CARROL *
ALLEN; KEITH MUSHITZ; and *
HERMAN PETERS, in their official *
capacities as members of the Charles Mix *
County Commission; and NORMAN *
CIHAK, in his official capacity as *
Auditor of Charles Mix County, *
*
Defendants. *
*

Defendants filed an Amended Motion for Stay, Doc. 48, seeking a stay of the Court's ruling on Plaintiffs' pending summary judgment motion. The thrust of the Defendants' argument is that if the Court will stay this litigation until after it can redistrict, the Defendants may be able to avoid paying Plaintiffs' attorneys fees. Defendants do not cite any authority for such a stay and the Court does not find that a stay of this action to allow Defendants the possibility of avoiding paying Plaintiffs' attorneys fees is a legitimate basis for a stay and the interest of justice does not require a stay in this action. *See Contracting Northwest, Inc. v. City of Fredericksburg, Iowa*, 713 F.2d 382, 387 (8th Cir. 1983) (recognizing that federal courts have the inherent power to issue a stay when the interest of justice so require).

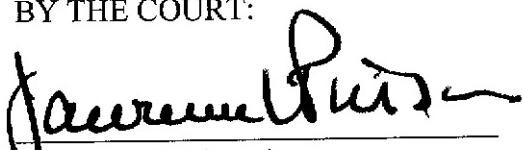
The brief in this case concludes that the primary reason for Plaintiffs' attorneys resistance toward the passage of South Dakota House Bill 1265 was to obtain attorneys fees as a prevailing party in litigation. Having reviewed the transcript of the Hearing Before the Senate State Affairs

Committee of the South Dakota Legislature, dated Monday, February 28, 2005, the Court finds that Plaintiffs' attorneys had other legitimate grounds for resisting passage of House Bill 1265. (Doc. 48, Ex. A.) Accordingly,

IT IS ORDERED that Defendants' Amended Motion for Stay, Doc. 48, is denied.

Dated this 2nd day of September, 2005.

BY THE COURT:



Lawrence L. Piersol
Chief Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Shelly Margulies
DEPUTY